

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FAY HOWELL,

Plaintiff,

vs.

No. CIV 01-35 JP/WWD

MT. TAYLOR MILLWORKS, INC.,
a New Mexico corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court *sua sponte* as a result of reviewing Plaintiff's Response to Defendant's Motion to Dismiss Without Prejudice. By an Order to Show Cause filed May 23, 2001, Plaintiff had been directed to appear on June 7, 2001 before Chief Magistrate Judge Deaton to show cause why her case should not be dismissed because of Plaintiff's failure to participate in discovery. Plaintiff points out that she did not attend the scheduling conference before Judge Deaton on April 20, 2001 because the cover sheet for the order setting the initial scheduling conference incorrectly set the date at April 30, 2001, instead of April 20, 2001, as was set out in the order. Accordingly, it would not be proper to penalize Plaintiff for failing to appear for the initial scheduling conference on April 20, 2001. Also, Defendant's Motion to Dismiss (Doc. No. 9) filed April 24, 2001 should be denied.

IT IS ORDERED THAT:

1. The show cause hearing set for June 7, 2001 is vacated; and
2. A second initial scheduling conference will be set as soon as reasonably possible; and
3. Defendant's Motion to Dismiss (Doc. No. 9) is denied.



CHIEF UNITED STATES DISTRICT JUDGE